

**STATEMENT ON IMPEACHMENT IN CONJUNCTION WITH TESTIMONY BEFORE
THE HOUSE JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES
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My concern is the political and constitutional consequences of impeachment rather than its legal and judicial aspects. The process is judicial in form, impeachment by the House being like indictment by a grand jury and trial and conviction by the Senate being like trial and conviction by a court. In fact, however, the consequences of successful impeachment do not resemble the usual consequences of a judicial trial- for instance, punishment by fine and/or imprisonment. As Article I, section III, par. 7 provides, punishment of that kind would be invoked after the President had become a private citizen by resignation, removal or expiration of his term of office.

Removal from office, the grand and forbidding consequence of successful impeachment, distinguishes this process radically from the judgement of a court. It resembles rather a vote of no confidence in a legislature, such as the British parliament. By such a vote the House of Commons can bring to an end the life of a government. In 1841, Sir Robert Peel summed up this fundamental convention of the British Constitution when he successfully moved that "her Majesty's Ministers do not sufficiently possess the confidence of the House of Commons to enable them to carry through the House measures which they deem of essential importance to the public welfare."

Like a vote of no confidence, impeachment brings to an end a President's Administration. Like a vote of no confidence it relates not merely to some specific failure, but is a judgement on his record and promise as a whole with regard to those "measures which he deems of essential importance to the public welfare." Because of these broad and weighty consequences, impeachment is primarily a political, not a judicial act.

As a political act, impeachment like a vote of no confidence passes judgement on and enforces responsibility on the executive power. In the British system, that responsibility runs directly to the legislature. In the American system, on the contrary, that responsibility runs to the legislature only secondarily and in special circumstances. For us, the responsibility of the President is essentially and directly to the voters. The legislature as a separate office, separately elected, likewise is held accountable by the voters. This separation of powers is fundamental in our constitutional design and is a main point of distinction from the British system. The direct responsibility of both branches to the voters expresses the sovereignty of the people as the ultimate authority of our constitution and of the government established under it.

As the framers struggled to give expression to this principle, they ran into a problem. How were our liberties to be protected against misuse of power by the executive between

quadrennial elections? At the Philadelphia convention during the summer of 1787 they explored various possibilities, such as appeals to the Supreme Court and similar bodies. The states, likewise, we may note, experimented in theory and practice with a variety of methods of bridging this gap. At the last moment, the framers incorporated a structure almost exactly in the form then being used in England in the impeachment of Warren Hastings. This device, although it had ancient roots, had come to special prominence in the 17th and 18th centuries when Great Britain also for a time displayed a separation of powers, as a still powerful and independent monarch faced off against the rising assertions of the parliament. In those circumstances, impeachment was adopted by the parliamentarians as a means of enforcing responsibility on the monarch through action against his ministers. When, finally, the monarch was eased out of politics the old fusion of executive and legislative power was taken over by a committee of the parliament--the cabinet. Now the interim method of getting a hold on the executive was dropped in favor of a vote of confidence which performed more effectively the function of enforcing responsibility on parliament. At the same time that impeachment was dying out in Britain, it was taken up by Americans, who found in it a way of supplementing the principal mechanism of democratic responsibility by quadrennial elections. The broad scope of impeachment was embodied in a very different system.

Where the ultimate sovereign is the people, the interference of one power, the legislature in its exercise of such a dire responsibility as removal of a popularly elected President imposes severe duties on the legislature. The Congress itself, not the primary source of authority, but only a creature of the people, acting in lieu of the people between quadrennial elections. At their best, the legislators will do what the people, at their best, would do, weighing the pluses and minuses of the record and the promise as a whole, asking, "Does the national interest require the removal from office of this President?" In the case of President Clinton, the American people have twice answered that question by electing him to the American Presidency. If we seek further light on the American mind, surveys of opinion continue to confirm that answer which also in no way is disturbed by the outcome of the recent midterm elections.

The failure to consider the whole record of Clinton's Presidency in foreign and domestic affairs could have severe long run costs. The removal of a President, thanks to such neglect in judgement, could damage our democratic system. Consider the temptations which this precedent would excite in a Congress of a different party against a future President of a different party. As a great historian, Henry Adams, said, on the failed attempt of the Jeffersonians to remove Justice Chase, impeachment is not a suitable activity for party politics.